

House Bill 1171

By: Representatives Holmes of the 48th, Post 1, Bruce of the 45th, Sinkfield of the 50th, Stanley-Turner of the 43rd, Post 2, Mobley of the 58th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6A of Title 7 of the Official Code of Georgia Annotated, the "Georgia
2 Fair Lending Act," so as to revise certain definitions; to provide for changes in limitations
3 on late payment charges; to clarify what practices constitute flipping of home loans; to repeal
4 provisions concerning the limitation of the recovery of attorneys' fees and costs in certain
5 actions; to change certain provisions concerning claims and defenses for violations of the
6 Act; to provide for certain exceptions and exemptions; to repeal certain other exceptions and
7 exemptions; to repeal authority of Department of Banking and Finance to promulgate rules
8 and regulations under the Act; to repeal certain provisions concerning good faith reliance on
9 guidance from the Department of Banking and Finance; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, the "Georgia Fair Lending
14 Act," is amended by striking Code Section 7-6A-2, relating to definitions, and inserting in
15 lieu thereof a new Code Section 7-6A-2 to read as follows:

16 "7-6A-2.

17 As used in this chapter, the term:

- 18 (1) 'Acceleration' means a demand for immediate repayment of the entire balance of a
19 home loan.
- 20 (2) 'Affiliate' means any company that controls, is controlled by, or is under common
21 control with another company, as set forth in 12 U.S.C. Section 1841, et seq.
- 22 (3) 'Annual percentage rate' means the annual percentage rate for the loan calculated at
23 closing according to the provisions of 15 U.S.C. Section 1606, the regulations
24 promulgated thereunder by the Board of Governors of the Federal Reserve System, and
25 the Official Staff Commentary on Regulation Z published by the Board of Governors of

1 the Federal Reserve System. For purposes of this chapter, the annual percentage rate shall
2 be determined as follows:

3 (A) For a variable rate loan with a temporary initial rate that is lower than the rate that
4 will apply after the temporary rate expires, the annual percentage rate shall not include
5 such temporary initial rate;

6 (B) For a variable rate loan, the annual percentage rate shall be determined by using
7 the index rate and adding the maximum margin permitted during the term of the loan;
8 and

9 (C) For all other home loans with rates that may later increase, the rate shall be
10 determined based on the maximum interest rate permitted during the term of the loan.

11 (4) 'Bona fide discount points' means loan discount points knowingly paid by the
12 borrower for the express purpose of reducing, and which in fact do result in a bona fide
13 reduction of, the interest rate applicable to the home loan; provided, however, that the
14 undiscounted interest rate for the home loan does not exceed by more than one percentage
15 point the required net yield for a 90 day standard mandatory delivery commitment for a
16 home loan with a reasonably comparable term from either the Federal National Mortgage
17 Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

18 (5) 'Borrower' means any natural person obligated to repay the loan including a
19 coborrower or cosigner.

20 (6) 'Covered home loan' means a home loan in which:

21 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
22 transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate
23 of the loan at consummation is such that it exceeds, as of noon ten business days prior
24 to such consummation, (i) for a home loan secured by a first lien, the higher of (I) four
25 percentage points above prime rate or (II) two percentage points above the required net
26 yield for a 90 day standard mandatory delivery commitment for a home loan with a
27 reasonably comparable term from either the Federal National Mortgage Association or
28 the Federal Home Loan Mortgage Corporation, whichever is greater, or (ii) for a home
29 loan secured by a junior lien, the higher of (I) five and one-half percentage points above
30 prime rate or (II) three percentage points above the required net yield for a 90 day
31 standard mandatory delivery commitment for a loan with a reasonably comparable term
32 from either the Federal National Mortgage Association or the Federal Home Loan
33 Mortgage Corporation, whichever is greater;

34 (B) The total points and fees payable in connection with the loan, excluding not more
35 than two bona fide discount points, exceed 3 percent of the total loan amount; or

36 (C) The home loan is such that it is considered a high-cost home loan under this
37 chapter.

1 ~~(7)~~ (7) 'Creditor' means a person who ~~both regularly~~ extends consumer credit that is subject
 2 to a finance charge or is payable by written agreement in more than four installments ~~and~~
 3 ~~is a person to whom the debt arising from the home loan transaction is initially payable.~~

4 Creditor shall also mean any person brokering a home loan, which shall include any
 5 person who directly or indirectly ~~for compensation~~ solicits, processes, places, or
 6 negotiates home loans for others or offers to solicit, process, place, or negotiate home
 7 loans for others or who closes home loans which may be in the person's own name with
 8 funds provided by others and which loans are thereafter assigned to the person providing
 9 the funding of such loans, provided that creditor shall not include a person who is an
 10 attorney providing legal services in association with the closing of a home loan. A
 11 creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any
 12 state or local housing finance agency or any other state or local governmental or
 13 quasi-governmental entity.

14 ~~(7)~~ (8) 'High-cost home loan' means a home loan in which the terms of the loan meet or
 15 exceed one or more of the thresholds as defined in paragraph ~~(17)~~ (19) of this Code
 16 section.

17 ~~(8)~~ (9) 'Home loan' means a loan, including an open-end credit plan where the principal
 18 amount does not exceed the conforming loan size limit for a single-family dwelling as
 19 established by the Federal National Mortgage Association and the loan is secured by a
 20 mortgage, security deed, or deed to secure debt on real estate located in this state upon
 21 which there is located or there is to be located a structure or structures, including a
 22 manufactured home, designed principally for occupancy of from one to four families and
 23 which is or will be occupied by a borrower as the borrower's principal dwelling, except
 24 that home loan shall not include:

25 ~~(A) A reverse~~ a reverse mortgage transaction;

26 ~~(B) A loan~~ a loan that provides ~~temporary~~ bridge financing for the ~~acquisition of land~~
 27 ~~by the borrower and initial construction of a borrower's dwelling thereon or the initial~~
 28 ~~construction of a borrower's dwelling on land owned by the borrower;~~

29 ~~(C) A bridge loan made to a borrower pending the sale of the borrower's principal~~
 30 ~~dwelling or a temporary loan made to a borrower and secured by the borrower's~~
 31 ~~principal dwelling pending the borrower's obtaining permanent financing for such~~
 32 ~~principal dwelling;~~

33 ~~(D) A loan secured by personal property including, but not limited to, a motor vehicle,~~
 34 ~~motor home, boat, or watercraft and also secured by the borrower's principal dwelling~~
 35 ~~to provide the borrower with potential income tax advantages when such personal~~
 36 ~~property is the primary collateral for such loan;~~

1 ~~(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken~~
 2 ~~in connection with a debt previously contracted or incurred when the loan documents~~
 3 ~~for such new loan do not include a mortgage, security deed, or deed to secure debt~~
 4 ~~expressly securing such new loan; or~~

5 ~~(F) A loan~~ a loan primarily for business, agricultural, or commercial purposes.

6 ~~(9)~~ (10) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home
 7 loan including the soliciting, processing, placing, or negotiating of a home loan made or
 8 offered by a person brokering a home loan.

9 ~~(10)~~ (11) 'Manufactured home' means a structure, transportable in one or more sections,
 10 which in the traveling mode is eight body feet or more in width or 40 body feet or more
 11 in length or, when erected on site is 320 or more square feet and which is built on a
 12 permanent chassis and designed to be used as a dwelling with a permanent foundation
 13 when erected on land secured in conjunction with the real property on which the
 14 manufactured home is located and connected to the required utilities and includes the
 15 plumbing, heating, air-conditioning, and electrical systems contained therein; except that
 16 such term shall include any structure which meets all the requirements of this paragraph
 17 except the size requirements and with respect to which the manufacturer voluntarily files
 18 a certification required by the secretary of the United States Department of Housing and
 19 Urban Development and complies with the standards established under the National
 20 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.
 21 Section 5401, et seq. Such term does not include rental property or second homes or
 22 manufactured homes when not secured in conjunction with the real property on which the
 23 manufactured home is located.

24 ~~(11)~~ (12) 'Open-end credit plan' or 'open-end loan' means a loan in which (A) a creditor
 25 reasonably contemplates repeated transactions; (B) the creditor may impose a finance
 26 charge from time to time on an outstanding balance; and (C) the amount of credit that
 27 may be extended to the borrower during the term of the loan, up to any limit set by the
 28 creditor, is generally made available to the extent that any outstanding balance is repaid.

29 ~~(12)~~ (13) 'Points and fees' means:

- 30 (A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12
 31 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under
 32 12 C.F.R. 226.4(c)~~(7)~~ are excluded from points and fees, provided that ~~for items under~~
 33 ~~12 C.F.R. 226.4(c)(7)~~ the creditor does not receive direct or indirect compensation in
 34 connection with the charge and the charge is not paid to an affiliate of the creditor;
 35 (B) All compensation paid directly or indirectly to a mortgage broker from any source,
 36 including a broker that originates a loan in its own name in a table funded transaction,
 37 including but not limited to yield spread premiums, yield differentials, and service

1 release fees, provided that the portion of any yield spread premium that is both
 2 disclosed to the borrower in writing and used to pay bona fide and reasonable fees to
 3 a person other than the creditor or an affiliate of the creditor for the following purposes
 4 is exempt from inclusion in points and fees: fees for tax payment services; fees for
 5 flood certification; fees for pest infestation and flood determination; appraisal fees; fees
 6 for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the
 7 borrower has the right to select the attorney from an approved list or otherwise; notary
 8 fees; escrow charges, so long as not otherwise included under subparagraph (A) of this
 9 paragraph; title insurance premiums; and fire and hazard insurance and flood insurance
 10 premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

11 (C) Premiums or other charges for credit life, credit accident, credit health, credit
 12 personal property, or credit loss-of-income insurance, debt suspension coverage or debt
 13 cancellation coverage, whether or not such coverage is insurance under applicable law,
 14 that provides for cancellation of all or part of a borrower's liability in the event of loss
 15 of life, health, personal property, or income or in the case of accident written in
 16 connection with a home loan and premiums or other charges for life, accident, health,
 17 or loss-of-income insurance without regard to the identity of the ultimate beneficiary
 18 of such insurance. In determining points and fees for the purposes of this paragraph,
 19 premiums or other charges shall only include those payable at or before loan closing
 20 and are included whether they are paid in cash or financed and whether the amount
 21 represents the entire premium for the coverage or an initial payment;

22 (D) The maximum prepayment fees and penalties that may be charged or collected
 23 under the terms of the loan documents: ~~Mortgage interest that may accrue in advance~~
 24 ~~of payment in full of a loan made under a local, state, or federal government sponsored~~
 25 ~~mortgage insurance or guaranty program, including a Federal Housing Administration~~
 26 ~~program, shall not be considered to be a prepayment fee or penalty;~~

27 (E) All prepayment fees or penalties that are charged to the borrower if the loan
 28 refinances a previous loan made or currently held or serviced by the same creditor or
 29 an affiliate of the creditor; and

30 (F) For open-end loans, points and fees are calculated in the same manner as for loans
 31 other than open-end loans, based on the minimum points and fees that a borrower
 32 would be required to pay in order to draw on the open-end loan an amount equal to the
 33 total credit line; ~~and~~.

34 (G) Points and fees shall not include:

35 (i) ~~Taxes~~ taxes, filing fees, recording, and other charges and fees paid or to be paid
 36 to public officials for determining the existence of or for perfecting, releasing, or
 37 satisfying a security interest;

1 ~~(ii) Bona bona fide~~ and reasonable fees paid to a person other than the creditor or an
 2 affiliate of the creditor for the following: fees for tax payment services; fees for flood
 3 certification; fees for pest infestation and flood determination; appraisal fees; fees for
 4 inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the
 5 borrower has the right to select the attorney from an approved list or otherwise; notary
 6 fees; escrow charges, so long as not otherwise included under subparagraph (A) of
 7 this paragraph; title insurance premiums; and fire and hazard insurance and flood
 8 insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;
 9 and

10 ~~(iii) Bona bona fide~~ fees paid to a federal or state government agency that insures
 11 payment of some portion of a home loan, including, but not limited to, the Federal
 12 Housing Administration, the Department of Veterans Affairs, the United States
 13 Department of Agriculture for rural development loans, or the Georgia Housing and
 14 Finance Authority; ~~and~~

15 ~~(iv) Notwithstanding any provision to the contrary in this chapter, compensation in~~
 16 ~~the form of premiums, commissions, or similar charges paid to a creditor or any~~
 17 ~~affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss~~
 18 ~~of or damage to property or against liability arising out of the ownership or use of~~
 19 ~~property, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.~~

20 (14) 'Prime rate' means the bank prime loan rate published by the Board of Governors
 21 of the Federal Reserve System, as published in statistical release II.15 or any publication
 22 that may supercede it.

23 ~~(13)~~ (15) 'Process,' 'processes,' or 'processing' means to act as a processor.

24 ~~(14)~~ (16) 'Processor' means any person that prepares paperwork necessary for or
 25 associated with the closing of a home loan, including but not limited to promissory notes,
 26 disclosures, deeds, and closing statements, provided that processor shall not include
 27 persons on the grounds that they are engaged in data processing or statement generation
 28 services for home loans.

29 ~~(15)~~ (17) 'Servicer' means the same as set forth in 24 C.F.R. 3500.2.

30 ~~(16)~~ (18) 'Servicing' means the same as set forth in 24 C.F.R. 3500.2.

31 ~~(17)~~ (19) 'Threshold' means:

32 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
 33 transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate
 34 of the loan is such that it equals or exceeds that set out in Section 152 of the Home
 35 Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the
 36 regulations adopted pursuant thereto by the Federal Reserve Board, including Section
 37 12 C.F.R. 226.32; or

1 (B) The total points and fees payable in connection with the loan, excluding not more
 2 than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the
 3 total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan
 4 amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

5 ~~(18)~~ (20) 'Total loan amount' means the ~~amount calculated as set forth in 12 C.F.R.~~
 6 ~~226.32(a) and under the Official Staff Commentary of the Board of Governors of the~~
 7 ~~Federal Reserve System~~ principal of the loan minus those points and fees as defined in
 8 paragraph (13) of this Code section that are included in the principal amount of the loan.

9 For open-end loans, the total loan amount shall be calculated using the total credit line
 10 available under the terms of the home loan ~~as the amount financed~~ minus those points and
 11 fees as defined in paragraph (13) of this Code section that are included in the total credit
 12 line.

13 (21) 'Variable rate loan' means a home loan where the rate of interest charged may
 14 change during the term of the loan, pursuant to a rate that is calculated only by using an
 15 index that can change due to circumstances beyond the direct control of the creditor or
 16 servicer and adding a margin that may change."

17 SECTION 2.

18 Said chapter is further amended by striking Code Section 7-6A-3, relating to limitations of
 19 home loans, and inserting in lieu thereof a new Code Section 7-6A-3 to read as follows:

20 "7-6A-3.

21 All home loans shall be subject to the following limitations and prohibited practices:

22 (1) No creditor shall make a home loan that finances, directly or indirectly:

23 (A) Any credit life, credit accident, credit health, credit personal property, or credit
 24 loss-of-income insurance, debt suspension coverage, or debt cancellation coverage,
 25 whether or not such coverage is insurance under applicable law, that provides for
 26 cancellation of all or part of a borrower's liability in the event of loss of life, health,
 27 personal property, or income or in the case of accident written in connection with a
 28 home loan; or

29 (B) Any life, accident, health, or loss-of-income insurance without regard to the
 30 identity of the ultimate beneficiary of such insurance;

31 provided, however, that for the purposes of this Code section, any premiums or charges
 32 calculated and paid on a ~~monthly~~ periodic basis that are not added to the principal of the
 33 loan shall not be considered financed directly or indirectly by the creditor;

34 (2) No creditor or servicer shall recommend or encourage default on an existing loan or
 35 other debt prior to and in connection with the closing or planned closing of a home loan
 36 that refinances all or any portion of such existing loan or debt;

1 (3) No creditor or servicer may charge a borrower a late payment charge unless the loan
 2 documents specifically authorize the charge, the charge is not imposed unless the
 3 payment is past due for ten days or more, and the charge does not exceed 5 percent of the
 4 amount of the late payment. A late payment charge may not be imposed more than once
 5 with respect to a particular single late payment. ~~If a late payment charge is deducted~~
 6 ~~from a payment made on the home loan and such deduction results in a subsequent~~
 7 ~~default on a subsequent payment, and~~ no late payment charge may be imposed for such
 8 default. ~~A lender may apply any payment made in the order of maturity to a prior~~
 9 ~~period's payment due even if the result is late payment charges accruing on subsequent~~
 10 ~~payments due~~ charged with respect to any subsequent payment that would have been a
 11 full payment but for the previous default or the imposition of the previous late payment
 12 charge; and

13 (4) No creditor or servicer may charge a fee for informing or transmitting to any person
 14 the balance due to pay off a home loan or to provide a release upon prepayment. When
 15 such information is provided by facsimile or if it is provided upon request within 60 days
 16 of the fulfillment of a previous request, a creditor or servicer may charge a processing fee
 17 up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event
 18 no more than five business days after the request."

19 SECTION 3.

20 Said chapter is further amended by striking Code Section 7-6A-4, relating to "flipping" a
 21 home loan, and inserting in lieu thereof a new Code Section 7-6A-4 to read as follows:

22 "7-6A-4.

23 (a) No creditor may ~~knowingly or intentionally~~ engage in the unfair act or practice of
 24 'flipping' a home loan. ~~Flipping a home loan is the consummating of a high cost~~ occurs
 25 when a creditor make a covered home loan to a borrower that refinances an existing home
 26 loan that was consummated within the prior five years when the new loan does not provide
 27 reasonable, tangible net benefit to the borrower considering all of the circumstances
 28 including, ~~but not limited to,~~ the terms of both the new and refinanced loans, the cost of the
 29 new loan, and the borrower's circumstances. In addition, the

30 (b) ~~The~~ home loan refinancing transaction shall be presumed to be a flipping where a
 31 ~~high-cost~~ covered home loan refinances an existing home loan that was consummated
 32 within the prior five years and that is a special mortgage originated, subsidized, or
 33 guaranteed by or through a state, tribal, or local government or a nonprofit organization,
 34 which either bears a below-market interest rate at the time the loan was originated or has
 35 nonstandard payment terms beneficial to the borrower, such as payments that vary with
 36 income, are limited to a percentage of income, or where no payments are required under

1 specified conditions and where, as a result of the refinancing, the borrower will lose one
 2 or more of the benefits of the special mortgage. ~~Notwithstanding any provision to the~~
 3 ~~contrary contained in this chapter, home loan refinancing transactions of first mortgage~~
 4 ~~loans originated by, purchased by, or assigned to the Georgia Housing and Finance~~
 5 ~~Authority shall not be presumed to be a flipping under this subsection.~~

6 ~~(c) Notwithstanding any provision to the contrary contained in this chapter regarding costs~~
 7 ~~and attorneys' fees, in any action instituted by a borrower who alleges that the defendant~~
 8 ~~violated this Code section, the borrower shall be entitled to costs and attorneys' fees only~~
 9 ~~if the presiding judge, in the judge's discretion, allows reasonable attorneys' fees and costs~~
 10 ~~to the borrower as prevailing party, such fees and costs to be taxed as a part of the court~~
 11 ~~costs and payable by the losing party upon a finding by the presiding judge that the party~~
 12 ~~charged with the violation has willfully engaged in the act or practice and there was~~
 13 ~~unwarranted refusal by such party to fully resolve the matter which constitutes the basis of~~
 14 ~~such action."~~

15 SECTION 4.

16 Said chapter is further amended by striking Code Section 7-6A-6, relating to affirmative
 17 claims and defenses against creditors, and inserting in lieu thereof a new Code Section
 18 7-6A-6 to read as follows:

19 "7-6A-6.

20 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
 21 or assigned by a person selling home improvements to the dwelling of a borrower, the
 22 borrower may assert against the creditor all affirmative claims and any defenses that the
 23 borrower may have against the seller or home improvement contractor, provided that this
 24 subsection shall not apply to loans other than high-cost home loans unless applicable law
 25 requires a certificate of occupancy, inspection, or completion to be obtained and said
 26 certificate is not obtained.

27 (b) ~~Notwithstanding any other provision of law, any person who purchases, is assigned,~~
 28 ~~or otherwise becomes a holder of a high-cost home loan shall be subject to all affirmative~~
 29 ~~claims and any defenses with respect to the high-cost home loan that the borrower could~~
 30 ~~assert against the creditor of the high-cost home loan, unless the purchaser or holder~~
 31 ~~demonstrates, by a preponderance of the evidence, that the purchaser or holder exercised~~
 32 ~~reasonable due diligence at the time of purchase of the home loans, or within a reasonable~~
 33 ~~time thereafter, intended to prevent the purchaser or holder from purchasing or taking~~
 34 ~~assignment of high-cost home loans including, but not limited to, any other provision of~~
 35 ~~this chapter, no person, other than a creditor, shall be liable for any violation of this~~
 36 ~~chapter.~~

1 (c) ~~The relief granted in an action pursuant to subsection (b) of this Code section:~~

2 (1) ~~May be asserted by the borrower only in an individual action and shall not exceed the~~
3 ~~sum of the amount of all remaining indebtedness of the borrower under such loan and~~
4 ~~reasonable attorneys' fees in such individual action;~~

5 (2) ~~May be sought by the borrower of a high-cost home loan after notice of acceleration~~
6 ~~or foreclosure of the high-cost home loan, asserting a violation of Code Section 7-6A-4~~
7 ~~or 7-6A-5 in an individual action to enjoin foreclosure or to preserve or obtain possession~~
8 ~~of the home secured by the high-cost home loan; and~~

9 (3) ~~Must be brought within one year from the date of the occurrence of the violation;~~
10 ~~provided, however, a borrower shall not be barred from asserting a violation of Code~~
11 ~~Section 7-6A-5 in an action to collect the debt which was brought more than one year~~
12 ~~from the date of the occurrence of such a violation as a matter of defense by recoupment~~
13 ~~or set-off in such action except as otherwise provided by law Notwithstanding any other~~
14 ~~provision of law, a borrower of a covered home loan, after notice of acceleration or~~
15 ~~foreclosure of the loan or if in default more than 60 days, may assert a violation of this~~
16 ~~chapter against any creditor by way of offset in an original action, as a claim to enjoin~~
17 ~~foreclosure, as a defense or counterclaim to an action to collect amounts owed, or to~~
18 ~~preserve or obtain possession of the home secured by the home loan.~~

19 (d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the
20 application of this chapter by dividing any loan transaction into separate parts or structuring
21 a home loan transaction as an open-end loan for the purpose of evading the provisions of
22 this chapter when the loan would have been a high-cost home loan if the loan had been
23 structured as a closed-end loan or engaging in any other subterfuge with the intent of
24 evading any provision of this chapter."

25 SECTION 5.

26 Said chapter is further amended by striking Code Section 7-6A-7, relating to violation of
27 chapter, and inserting a new Code Section 7-6A-7 to read as follows:

28 "7-6A-7.

29 (a) Any ~~creditor~~ person found by a preponderance of the evidence to have violated this
30 chapter shall be liable to the borrower for the following:

31 (1) Actual damages, including consequential and incidental damages;

32 (2) Statutory damages equal to the recovery of two times the interest paid under the loan
33 and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code
34 Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section
35 7-6A-5;

36 (3) Punitive damages subject to Code Section 51-12-5.1; and

1 (4) Costs and reasonable attorneys' fees.

2 (b) A borrower may be granted injunctive, declaratory, and such other equitable relief as
3 the court deems appropriate in an action to enforce compliance with this chapter including,
4 but not limited to, the following:

5 (1) Notwithstanding any other provision of law, a court shall have the discretion not to
6 require a borrower of a ~~high-cost~~ covered home loan seeking injunctive or other equitable
7 relief under the provisions of this chapter to make a tender upon a showing that the
8 borrower has a reasonable likelihood of being successful on the merits. When tender is
9 not required by the court, upon application to the court by the creditor, the court shall
10 require the borrower to pay into the registry of the court all regularly scheduled home
11 loan payments including property taxes and homeowners hazard insurance premiums if
12 required by escrow agreement which are the responsibility of the borrower payable to the
13 creditor or servicer under the terms of the home loan agreement which become due after
14 the filing of the legal action, said home loan payments to be paid as such become due,
15 and such other expenses provided under the home loan agreement as the court may deem
16 just, provided that regularly scheduled payments shall not include any payments allegedly
17 due under any acceleration provision of the home loan. If the creditor or servicer and the
18 borrower disagree as to the amount of the home loan payments due, either or both of
19 them may submit to the court any written home loan agreement for the purpose of
20 establishing the amount of home loan payments to be paid into the registry of the court;

21 (2) If the borrower should fail to make any regularly scheduled payment ~~under a~~
22 ~~high-cost home loan~~ as it becomes due after the filing of this action, upon application to
23 the court by the creditor or servicer, the court may issue an order denying the borrower's
24 petition for injunctive or other equitable relief, and vacating any decree for injunctive or
25 equitable relief previously entered by the court; and

26 (3) The court shall order the clerk of the court to pay to the creditor or any person the
27 creditor may designate the payments claimed under the ~~high-cost~~ home loan agreement
28 paid into the registry of the court as said payments are made; provided, however, that, if
29 the borrower claims that he or she is entitled to all or any part of the funds and such claim
30 is an issue of controversy in the litigation, the court shall order the clerk to pay to the
31 creditor or any person the creditor may designate without delay only that portion of the
32 funds to which the borrower has made no claim in the proceedings or may make such
33 other order as is appropriate under the circumstances. That part of the funds which is a
34 matter of controversy in the litigation shall remain in the registry of the court until a
35 determination of the issues by the trial court. If either party appeals the decision of the
36 trial court, that part of the funds equal to any sums found by the trial court to be due from
37 the creditor or servicer to the borrower shall remain in the registry of the court until a

1 final determination of the issues. The court shall order the clerk to pay to the creditor or
 2 any person the creditor may designate without delay the remaining funds in court and all
 3 payments of future home loan payments made into court pursuant to paragraph (1) of this
 4 subsection unless the borrower can show good cause that some or all of such payments
 5 should remain in court pending a final determination of the issues.

6 (c) The remedies provided in this chapter shall be cumulative.

7 (d) Any violation of this chapter may be enforced pursuant to Code Section 9-11-23.

8 (e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and
 9 a right of rescission for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any
 10 violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5 shall be
 11 available to a borrower of a high-cost home loan at any time during the term of the loan not
 12 to exceed a period of five years after the consummation of the loan.

13 (f) The brokering of a home loan by a broker registered or licensed or required to be
 14 registered or licensed as a broker under the laws of this state or any other jurisdiction that
 15 violates the provisions of this chapter shall constitute a violation of such provisions.

16 (g) Without regard to whether a borrower is acting individually or on behalf of others
 17 similarly situated, any provision of a home loan agreement that allows a party to require
 18 a borrower to assert any claim or defense in a forum that is less convenient, more costly,
 19 or more dilatory for the resolution of a dispute than a judicial forum established in this state
 20 where the borrower may otherwise properly bring the claim or defense or limits in any way
 21 any claim or defense the borrower may have is unconscionable and void.

22 (h) An action under this chapter may be brought within four years of the date of the last
 23 payment made or five years after the date of the first scheduled payment, whichever is
 24 earlier, by the borrower under the home loan.

25 (i) The remedies provided in this chapter are not intended to be the exclusive remedies
 26 available to a borrower nor must the borrower exhaust any administrative remedies
 27 provided under this chapter or any other applicable law before proceeding under this Code
 28 section."

29 SECTION 6.

30 Said chapter is further amended by striking Code Section 7-6A-12, relating to application of
 31 the chapter, and inserting in lieu thereof a new Code Section 7-6A-12 to read as follows:

32 "7-6A-12.

33 ~~The provisions of this chapter shall not apply to any bank, trust company, savings and loan,~~
 34 ~~savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the~~
 35 ~~laws of this state or any other state only to the extent federal law precludes or preempts or~~
 36 ~~has been determined to preclude or preempt the application of the provisions of this chapter~~

1 ~~to any federally chartered bank, trust company, savings and loan, savings bank, or credit~~
 2 ~~union, respectively, and such federal preclusion or preemption shall apply only to the same~~
 3 ~~type of state chartered entity as the federally chartered entity affected; provided, however,~~
 4 ~~the provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be~~
 5 ~~applicable to an independent mortgage broker for any loan originated or brokered by the~~
 6 ~~broker that is initially funded by any state or federally chartered bank, trust company,~~
 7 ~~savings and loan, savings bank, or credit union Reserved.~~"

8 **SECTION 7.**

9 Said chapter is further amended by striking Code Section 7-6A-13, relating to promulgation
 10 of rules and regulations, and inserting in lieu thereof a new Code Section 7-6A-13 to read as
 11 follows:

12 "7-6A-13.

13 ~~Without limitations on the power conferred by Chapter 1 of this title, the Department of~~
 14 ~~Banking and Finance shall have the authority to promulgate rules and regulations not~~
 15 ~~inconsistent with law for the enforcement of this chapter to effectuate the purposes of this~~
 16 ~~chapter and to clarify the meaning of terms. In complying with this chapter, a creditor's~~
 17 ~~good faith reliance on any formal or informal written guidance of the Department of~~
 18 ~~Banking and Finance previously made available to the general public shall constitute~~
 19 ~~prima-facie evidence of compliance with this chapter. The provisions of this Code section~~
 20 ~~shall apply even if, following the reliance, such guidance is amended, rescinded, or~~
 21 ~~determined by any judicial or other authority to be invalid Reserved.~~"

22 **SECTION 8.**

23 All laws and parts of laws in conflict with this Act are repealed.